

Case Summary

Steven Conley appeals the termination of his parental rights to his child, A.C. We affirm.

Issue

The sole issue is whether the trial court properly denied Conley's motion for a continuance of the final fact-finding hearing.

Facts

The relevant facts for purposes of this appeal are that on May 24, 2005, the Floyd County Department of Child Services ("DCS") filed a petition to terminate Conley's parental rights to his child, A.C. On October 13, 2005, the trial court appointed a public defender to represent Conley, who filed his appearance on Conley's behalf five days later. On November 16, 2005, the trial court held a pre-trial conference and scheduled a final fact-finding hearing for May 12, 2006. Conley did not appear at this hearing, but it was continued to June 9, 2006, because the CASA had not yet had an opportunity to meet with Conley. On May 24, 2006, Conley appeared at a hearing concerning A.C.'s mother, and the trial court reminded him of the June 9, 2006 final hearing in his case.

Conley's attorney had difficulty contacting him to discuss the case before the June 9, 2006 hearing. The attorney left two messages at a phone number he had for Conley, but neither was returned. On June 2, 2006, the attorney sent a letter to Conley at two different addresses asking Conley to contact him. On June 5, 2006, Conley left a phone message for his attorney but did not leave a callback number. On June 6, 2006, Conley called his attorney at 7:30 p.m. and this time left a callback number, but also stated that

the attorney needed to call him back at that number by 8:00 p.m. The attorney was unable to do so. The only contact Conley had with his attorney in preparation for the hearing was one brief phone call.

At the beginning of the June 9, 2006 hearing, Conley's attorney moved to continue the hearing because of the lack of pre-hearing communication with Conley. The trial court denied the motion. It observed that the attorney who had prepared and would be trying the case for DCS would shortly be leaving its employ. The trial court also stated that it had forced the continuation of a civil trial to accommodate a quick resolution of the termination of parental rights petition against Conley. Finally, the trial court noted that Conley was given first-hand notice of the June 9, 2006 hearing on May 24, 2006. The termination hearing proceeded as planned. On July 6, 2006, the trial court terminated Conley's parental rights to A.C. Conley now appeals.

Analysis

Conley only challenges the trial court's denial of his continuance motion. A trial court's ruling on a motion for continuance in a termination of parental rights case is reviewed for an abuse of discretion. See J.M. v. Marion County Office of Family and Children, 802 N.E.2d 40, 43 (Ind. Ct. App. 2004), trans. denied. "Discretion is a privilege afforded a trial court to act in accord with what is fair and equitable in each circumstance." Id. A trial court's ruling on a continuance motion should be set aside only if it is clearly against the logic and effect of the facts and circumstances before the court or the reasonable, probable, and actual deductions to be drawn therefrom. Id. at 44.

Even if the facts and reasonable inferences in certain instances might have allowed for a different conclusion, we will not substitute our judgment for that of the trial court. Id.

No later than May 24, 2006, and arguably much earlier, Conley knew that a final hearing on the termination petition was rapidly approaching. Despite that fact, Conley's efforts to make contact with his attorney before that date, as related by the attorney, can fairly be described as half-hearted. This is especially true, given the vital interests at stake in the June 9, 2006 hearing.

We also believe the trial court properly recognized that continuances in cases concerning termination of parental rights should be disfavored. This court and our supreme court have formalized that disfavor. Effective January 1, 2007, extensions of time in appeals involving the termination of parental rights are unconditionally prohibited. Ind. Appellate Rule 35(C).¹ Time is of the essence in cases involving children. Continuances in such cases should not be granted lightly. Certainly, Conley's failure to establish or maintain contact with his attorney prior to the June 9, 2006 hearing did not require the trial court to grant a continuance and thereby leave A.C. in limbo for several more weeks or even months, awaiting final resolution of this case.

Conclusion

The trial court did not abuse its discretion in denying Conley's continuance motion. We affirm.

¹ Prior to this date, extensions in such cases could be granted but only "in extraordinary circumstances."

Affirmed.

NAJAM, J., and RILEY, J., concur.